

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
AXIS REINSURANCE COMPANY,	:	Adv. Proc. No. 07-01712 RDD
	:	(Reference Withdrawn:
Plaintiff,	:	Case No. 08-cv-03242 (GEL))
v.	:	
PHILLIP R. BENNETT, et al.,	:	
	:	
Defendants.	:	
-----	x	
AXIS REINSURANCE COMPANY,	:	Case No. 07-cv-07924 (GEL)
	:	
Plaintiff,	:	
v.	:	
PHILLIP R. BENNETT, et al.,	:	<i>Electronically Filed</i>
	:	
Defendants.	:	
-----	x	

**REPLY DECLARATION OF PAMELA SYLWESTRZAK
IN FURTHER SUPPORT OF MOTIONS FOR
SUMMARY JUDGMENT AGAINST AXIS REINSURANCE COMPANY**

I, PAMELA SYLWESTRZAK, hereby declare:

1. I am a Senior Vice President of Marsh USA, Inc. (“Marsh”) and I respectfully submit this reply declaration in further support of the motions of various insureds, made pursuant to Fed. R. Civ. P. 56, for entry of summary judgment against Axis Reinsurance Company (“Axis”). This declaration is based on my personal knowledge and my review of certain documents in Marsh’s files.
2. As I stated in paragraphs 8 -11 of my prior declaration, dated March 27, 2008, the letter dated January 14, 2005, executed by Refco’s Phillip Bennett on or about January 21, 2005 (the “Warranty Letter”), which was attached as Exhibit E to my prior declaration, was explicitly requested by Axis, and was supplied by Refco Group Ltd. LLC, solely in connection with the Axis 2004-2005 Policy.

3. According to Marsh's files, Marsh transmitted the Warranty Letter to Steven Kane at Axis via email on January 25, 2005. I was copied on that January 25, 2005 email. A true and accurate copy of the email, dated January 25, 2005, transmitting the Warranty Letter to Mr. Kane at Axis, is attached hereto as Exhibit M.

4. Marsh provided the policy forms and endorsements for the U.S. Specialty 2005-2006 Policy to Axis long before Axis issued its August 11, 2005 Policy Binder. A true and accurate copy of the June 8, 2005 email from Marsh's James Schneider, sent to both Sean Lukac of Axis and to me, and attaching the U.S. Specialty quotation, main policy form and endorsements, is annexed hereto as Exhibit N.

5. Moreover, prior to issuing its final policy binder, dated August 11, 2005, Axis had already received U.S. Specialty's final policy binder, dated August 10, 2005, which made no reference to any inverted warranty or knowledge exclusion endorsement to the Primary Policy. A true and accurate copy of the August 10, 2005 e-mail from Marsh's Kenny Li, sent to Sean Lukac of Axis and forwarding U.S. Specialty's policy binder of the same date, is annexed hereto as Exhibit O.

6. To the best of my knowledge, at no time prior to the issuance of the Axis 2005-2006 Policy on March 1, 2006, did Axis ever request that U.S. Specialty add a Knowledge Exclusion to the Primary Policy, nor did Axis ever advise Marsh that Axis needed a Knowledge Exclusion in order to issue its policy.

7. I have also read the Affidavit of Steven Kane, dated May 1, 2008, submitted in opposition to the insureds' motions for summary judgment. Mr. Kane has misconstrued the meaning of my August 11, 2005 internal email to my colleague, Kenny Li. In that email, which is attached as Exhibit C to Mr. Kane's affidavit, I conveyed a copy of the application that Refco Group Ltd. LLC had submitted to U.S. Specialty in connection with the 2004-2005 Program (*i.e.*,

the “8/4/04 placement”), I advised Mr. Li that U.S. Specialty did not require a new application for the 2005-2006 Program (*i.e.*, “the 8/11/05 binding of the IPO”), and I brought to Mr. Li’s attention that Refco Group Ltd. LLC had not signed the warranty in the application it had submitted to U.S. Specialty in connection with the 2004-2005 Program and, as a result, that U.S. Specialty had added an inverted warranty endorsement to its 2004-2005 Policy.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Chicago, Illinois
May 22, 2008

/s/ Pamela Sylwestrzak
Pamela Sylwestrzak

EXHIBIT M

**Matt
Foran/CHI-IL/US/Marsh/MMC**

01/25/2005 04:29 PM

To steven.kane@axiscapital.com

cc Pamela M
Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC,
Robert A Kelly/CHI-IL/US/Marsh/MMC@MMC

bcc

Subject Refco - Warranty Letter

Hello Steven,

Attached please find the warranty letter per your subjectivity. We should have the underlying policies to you shortly.

Thanks,

Matt



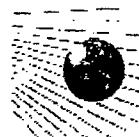
refco - axis warranty.pdf

**Matt Foran
Marsh USA, Inc.
500 West Monroe
Chicago, IL 60661
312.627.6648
matt.foran@marsh.com**

All Recipients

To: steven.kane@axiscapital.com
cc: Pamela M Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC, Robert A Kelly/CHI-IL/US/Marsh/MMC@MMC
From: Matt Foran/CHI-IL/US/Marsh/MMC

EXHIBIT N



James C
Schneider/NYC-NY/US/Marsh
/MMC
06/08/2005 05:14 PM

To Brad Kotlewski/NYC-NY/US/Marsh/MMC@MMC,
Pamela M
Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC, Paul
Huelbig/NYC-NY/US/Marsh/MMC@MMC
bcc bhuma.patel@ace-ina.com@internet
mfisher@archinsurance.com@internet
sean.lukac@axiscapital.com@internet Timothy R
Molineux/HAM/BM/Marsh/MMC@MMC
lgordon@chubb.com@internet
thomas.ruck@cna.com@internet
hank.toolan@xlgrouop.com@internet
mmoran1@stpaultravelers.com@internet
jonathan.schmiegel@libertyiu.com@internet
Gary Ella/LON/GB/Marsh/MMC@MMC
jason.brown@aig.com@internet
david.chin@aig.com@internet
kadamson@quantaholdings.com@internet
jason_rubman@rlcorp.com@internet
ronald.spencer@zurichna.com@internet
frank.forde@aig.com@internet
Subject Refco Inc. (HCC Primary Quote) Need Excess
Quotes ASAP

To All:

Attached below is HCC's primary \$10MM quote for REFCO's D&O. It is imperative that we receive quick feedback and quotes from the marketplace on this program. The IPO date is still firm for 6/15 and the client is looking to build potentially \$70MM in limits. This means we have 4 business days to secure and bind this entire program. I ask that all markets come in with their best pricing for the layer desired. The continuity date we are trying to match is 8/5/04.

I will be out of the office 6/9 and 6/10, but you can contact Brad Kotlewski at 212-345-4226. He has been copied on this email as well.

HCC has quoted the following terms:

- \$10MM limit
- \$500K retention
- \$320,000 in premium
- 12.5% commission

Other Terms & Conditions

- Quoted on U.S. Specialty Insurance Company paper (admitted)
- ERP is 1 year at 150% annual premium
- Includes non-entity EPL coverage
- E&O Exclusion with management carveback
- Investigative Cost Coverage Sublimit for derivative suits:\$250,000
- Subretention for non-SEC Claims: \$300,000
- Non Rescindable Side A
- Pollution Exclusion with Side A carveback
- BI/PD Exclusion with Side A carveback

We are still negotiating with HCC on the pricing which may end up being in the range of \$300K - \$320K. I have also listed a bunch of enhancements HCC is considering as well:

2-Amend "A" side deductible from \$5k to -0-

3-Consider reducing all other retention to \$ 250,000 and the SEC retention to \$350,000?

4-Address on policy will by NY address and not Chicago so the Illinois Amendatory shouldn't be on there. Please send a copy of any applicable NY amendatory endorsements and we'll need to review them.

5-Potential carveback for SEC and Side A on E&O exclusion?

6-Bi-lateral Discovery @ 100% AP?

7-Add Risk Manager and General Counsel as Insureds.

8-Add employed Lawyers Endorsement (sample AIG endorsement attached) - No sublimit.



AIG EMPLOYED LAWYERS LEGAL MALPRACTICE EXTENSION - SUBLIMITED.doc

9-Amend definition of Claim to include: "in the case of an investigation by the SEC or a similar state or foreign government authority, after the service of a subpoena upon such **Insured Person**."

10-Definition of Loss to include: " civil penalties assessed against any **Insured Person** pursuant to Section 2(g) (2)(C) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(C)"

11-Severability of Exclusions amended to simply read: The act or knowledge of an Insured Person shall not be imputed to any other Insured Person.

12-Severability of Application to read: "No statement in the application or knowledge possessed by any of the Insured Persons shall be imputed to any other Insured Person for the purpose of determining if coverage is available under Insuring Clause A. The statements in the application made by and knowledge possessed by each Insured Person shall be imputed to the Company for the sole purpose of determining if coverage is available under Insuring Clause B (1) with respect to Claims against such Insured Person, but shall not be imputed to the Company with respect to Claims against other Insured Persons. Knowledge possessed by the signor of the application shall be imputed to the Company with respect to Coverage under Insuring Clause (B) (2)."

13-Defense Costs to include pre and post judgement interest.

14-Backdated P&P Litigation Exclusion (6/4/04)

15-CONDITIONS. (F) Changes in Control (c) should be deleted in its entirety. The policy should not go into run-off or cancel in the event of bankruptcy. Also, Clause (2) (b) of Conditions (F) should be deleted.

The quote, policy form, and all endorsements are attached below for everyone's review. Please let us know your thoughts after you have had a chance to review.

Thanks,
Jim

James C. Schneider
Assistant Vice President
Marsh USA Inc.
1166 Avenue of the Americas

New York, NY 10036
Phone: 212-345-5329
Fax: 212-345-9418
Email: james.c.schneider@marsh.com

-  - Attachment.rtf
-  - NEW USSIC public policy 991(03-2004).doc
-  - IL USSIC PR 1117C-IL.doc
-  - 991-301 EPL - non-entity (Public).doc
-  - 991-412 EO exclusion with management carveback.doc
-  - 991-442 Amend Poll. Excl. - A-side carveback (Public).doc
-  - 991-444 Amend BIPD Excl - A-side carvebk (Public).doc
-  - 991-804 Derivative Demand Investigation Cost Cov Sublimit.doc
-  - 991-830 Subretention for non-SEC claims.doc
-  - 991-861 Non-Rescindable - A-Side Only - Absolute (Public).doc
-  - IL USSIC PR 1117C-IL.doc

All Recipients

To:
cc: Brad Kotlewski/NYC-NY/US/Marsh/MMC@MMC, Pamela M Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC,
Paul Huelbig/NYC-NY/US/Marsh/MMC@MMC
From: James C Schneider/NYC-NY/US/Marsh/MMC

EXHIBIT O



Kenny
Li/NYC-NY/US/Marsh/MMC
08/10/2005 04:27 PM

To
cc
bcc: frank.forde@aig.com jerome.brendle@awac.com
sean.lukac@axiscapital.com
mfisher@archinsurance.com
carla.waller@xlgrou.com
Hank.Toolan@xlgrou.com
Subject: Fw: Refco Inc. - Primary Binder

Please see the attached primary binder.

kl

Kenny Li
Marsh USA Inc.
Private Equity and Mergers & Acquisitions Svcs.
1166 Avenue of the Americas - 38th Floor
New York, NY 10036
Phone: 212-345-1989 Fax: 212-345-8491
Email: Kenny.Li@marsh.com

— Forwarded by Kenny Li/NYC-NY/US/Marsh/MMC on 08/10/2005 04:09 PM —



SMCQUILLEN@HCC-Global.
com@Internet
Sent by:
SMCQUILLEN@hcc-global.co
m
08/10/2005 04:07 PM

To: James C
Schneider/NYC-NY/US/Marsh/MMC@MMC,
Kenny Li/NYC-NY/US/Marsh/MMC@MMC
cc: erush@HCC-Global.com@Internet,
JGEORGE@HCC-Global.com@Internet
Subject: Refco Inc. - Primary Binder

Following your conversations and correspondence with Eric Rush on the above referenced account, and at his request, enclosed herewith please our binder. An executed copy will be faxed to your attention separately. Should you have any questions or if you require anything additional, please do not hesitate to contact our office.

For clarification please note that payments should be remitted to either address below as follows:

Via Overnight Mail:
Webster Bank
Attn: Lockbox Department
436 Slater Road
New Britain, CT 06053

Via Regular Mail:
HCC Global Financial Products LLC
Dept 630
P.O. Box 150473
Hartford, CT 06115-0473

Regards
Sue

Suzanne McQuillen
HCC Global Financial Products
111 Pavonia Avenue, Suite 1201
Jersey City, NJ 07310
Phone: 201-216-1136
Fax: 201-216-1225
<<USPUPRBN.PDF>>

Suzanne McQuillen
HCC Global Financial Products
A subsidiary of HCC Insurance Holdings, Inc.
Mailto:SMCQUILLEN@HCC-Global.com
Tel: (201) 216-1136

This e-mail transmission contains confidential information, and may contain privileged information, which is the property of the sender. The information in this e-mail or attachments thereto is intended for the attention and use of the addressee. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon or pursuant to, this information by persons or entities other than the intended recipient is strictly prohibited. If you receive this e-mail in error, please delete and destroy the e-mail and any attachments thereto and contact the sender immediately.



- USPUPRBN.PDF

All Recipients

To: James C Schneider/NYC-NY/US/Marsh/MMC@MMC, Kenny Li/NYC-NY/US/Marsh/MMC@MMC
cc: erush@HCC-Global.com@Internet, JGEORGE@HCC-Global.com@Internet
From: SMCQUILLEN@hcc-global.com@Internet

All Recipients

To:
cc:
From: Kenny Li/NYC-NY/US/Marsh/MMC



HCC Global Financial Products

111 Pavonia Avenue
Suite 1201
Jersey City, NJ 07310
United States of America
Tel: +1 (201) 216-1136
Fax: +1 (201) 216-1225
www.hcc-global.com

via facsimile (212) 345-8491

August 10, 2005

James C. Schneider
Marsh, Inc. of NY, NY
1166 Avenue of the Americas
New York, NY 10036

**Re: Refco Inc.
Directors and Officers Liability**

Dear James:

HCC Global Financial Products is pleased to present the following confirmation of binding on behalf of U.S. Specialty Insurance Company (Form USSIC 991 (03/2004)):

ITEM 1. Name And Principal Address:

Refco Inc.
550 W. Jackson Blvd. Suite 1300
Chicago, IL 60661

ITEM 2. Policy Number: 24-MGU-05-A10821

ITEM 3. Policy Period: (a) Inception Date: 8/11/2005
(b) Expiration Date: 8/11/2006
at 12:01 a.m. at the Principal Address stated in ITEM 1.

ITEM 4. Limit of Liability (Inclusive of Defense Expenses):

\$10,000,000 Limit of Liability (inclusive of defense expenses)

ITEM 5. Retentions:

\$ 0 per Insured Person each claim under Insuring Agreement (A)
\$300,000 each claim under Insuring Agreement (B1)
\$500,000 each claim under Insuring Agreement (B2)

ITEM 6. Premium: \$395,000.00

ITEM 7. Endorsements Effective at Inception:

80016 - Terrorism Coverage (premium allocated: included in premium below)
991-301 - Non Entity EPLI
991-302 - Amend Definition of Insured Person to add Specific Individual: Insurance Manager and General Counsel.
991-319 - Amend Definition of Loss to Include Pre-judgement Post-judgement interest
991-322 - Employed Lawyers Extension w/ Co-Def Requirement, Separate Limit and Retention: \$1mm sub-limit.
991-412 - E&O Exclusion with Management Carveback
991-415 - Specific Litigation Exclusion: McElwreath Case
991-442 - Amend Pollution Exclusion A-Side Carveback
991-444 - Amend Exclusion (c) (BI/PD, etc) - A Side Carveback
991-701 - Full Severability
991-804 - Investigative Cost Coverage Sublimit for Derivative Suits: \$250,000
991-830 - Separate Retention for Securities Claims Under Insuring Agreement (B)(1) - \$300,000
991-861 - Non-Rescindable A-Side Only-Absolute
991-876 - Specific Event(s) Exc. - Wells Notice/SEC Investigation
Illinois Amendatory - USSIC 1117C-IL
MANU - Controlling Shareholder coverage for Philip Bennett only

ITEM 8. Discovery: An optional extension period of 365 days will be available for 150% of the total premium paid.

ITEM 9. Commission: 12.5%

Contingencies:

Please note that this binder is contingent upon all of the following:

- The fully executed Terrorism Disclosure Notice.
- A copy of the Final Prospectus.
- Payment of the premium by the date indicated on the attached invoice

Failure to meet these contingencies may result in coverage being cancelled or voided ab initio.

Sincerely,

Jordan George on behalf of Eric Rush
(201) 216-1195
erush@hcc-global.com



HCC Global Financial Products

111 Pavonia Avenue
Suite 1201
Jersey City, NJ 07310
United States of America
Tel: +1 (201) 216-1136
Fax: +1 (201) 216-1225
www.hcc-global.com

August 10, 2005

Marsh, Inc. of NY, NY
1166 Avenue of the Americas
New York, NY 10036

INVOICE

PLEASE REMIT YOUR PAYMENT TO:
Please note our new remit to address:

Via Overnight Mail:

Webster Bank
Attn: Lockbox Department
436 Slater Road
New Britain, CT 06053

Via Regular Mail:

HCC Global Financial Products - (5405AA)
Dept 630
P.O. Box 150473
Hartford, CT 06115-0473

Policy No.:	24-MGU-05-A10821
Policy Name:	Refco Inc.
Effective - Expiration Dates:	8/11/2005 to 8/11/2006
Insurer:	U.S. Specialty Insurance Company
Broker:	James C. Schneider
Commission Percentage:	12.5%
Total Premium:	\$395,000.00
Taxes and/or Assessments:	\$ N/A (not applicable for all states)
Net Due:	\$345,625.00
Payment Due Date:	9/10/2005

Please remit full amount by the date indicated above. Failure to do so may result in coverage being cancelled or voided ab initio. Please feel free to contact our office at (201) 216-1195 with any questions regarding this remittance.